

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11231 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

ANILKUMAR HUKAMCHAND SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11231 of 2002
MR HR PRAJAPATI for Petitioner No. 1
MR MK PATEL, AGP for Respondent No. 1-3
MS PJ DAVAWALA for Respondent No. 4
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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 23/01/2003

ORAL JUDGEMENT

#. Leave to amend the cause title by changing the name of

the petitioner from "Shah" to "Sahu".

#. The District Magistrate, Ahmedabad, by his order dated 4.10.2002, detained the petitioner in exercise of the powers conferred upon him under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980. The order of detention is placed at page 17 in the compilation.

#. Along with the detention order, the petitioner is served with the grounds of detention. As per the said grounds, the petitioner is found to have indulged himself in black marketing by converting the blue kerosene into white kerosene, and, thereby making profit by selling the blue kerosene in the open market, though, he is not authorised to deal with the said commodity. The factual aspect is mentioned in the detention order by the detaining authority in detail. The said detention order is impugned in this petition at the instance of the detenu.

#. At the time of hearing of this petition, it is argued by Mr.Prajapati that, even though, the petitioner made the representation through his friend one Mr.Arvind Jain on 24.10.2002, and that the same was received by the detaining authority on 15.10.2002, yet the detaining authority sent the said representation to the State Government on 25.11.2002. Copy of the communication dated 15.11.2002 received by the petitioner from the District Magistrate, Ahmedabad is placed on record and the learned Assistant Government Pleader is also having the copy of the said communication.

#. It is required to be noted that, even though, on behalf of the petitioner, representation was made and that the same was received by the detaining authority on 25.10.2002, the detaining authority kept the said representation with him for a long time and sent the same to the State Government on 15.11.2002. The detaining authority has not explained the delay in forwarding the said representation, as, the same was kept by the detaining authority for about 20 days with him. The State Government has decided the representation promptly after receiving the same from the District Magistrate. The Central Government also decided the said representation of the petitioner promptly. The District Magistrate, unfortunately, has not sent the representation for decision of the State Government immediately and kept the same with him for about 20 days.

#. Apart from the aforesaid aspect, the detaining

authority has not explained the said delay by filing appropriate affidavit, in any manner. Since this delay is unexplained at the end of the detaining authority, this petition deserves to be allowed on this count especially when this factual aspect regarding delay on the part of the District Magistrate in forwarding the representation to the State Government as such is not in dispute. The petition is allowed. The order of detention dated 4.10.2002 is quashed and set aside. The detenu Anilkumar Hukamchand Sahu is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(P.B.Majmudar, J)
(pathan)